

Billing Code: 4910-60-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA-97-2717; Amdt. 195-78]  
RIN 2137-AD10

Pipeline Safety: Recommendations To Change Hazardous Liquid Pipeline Safety Standards

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

-----

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) is changing several safety standards for hazardous liquid and carbon dioxide pipelines. The changes, which concern welder qualifications, backfilling, records, training, and signs, are based on recommendations by the National Association of Pipeline Safety Representatives (NAPSR). RSPA/OPS believes the changes will improve the clarity and effectiveness of the present standards.

DATE: This Final Rule takes effect on October 14, 2003.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202-366-4559, by fax at 202-366-4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC, 20590, or by e-mail at buck.furrow@rspa.dot.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

NAPSR is a non-profit association of officials from state agencies that participate with RSPA/OPS in the Federal pipeline safety regulatory program. RSPA/OPS asked NAPSR to review the hazardous liquid pipeline safety standards in 49 CFR Part 195 and recommend any changes needed to make the standards more explicit, understandable, and enforceable. NAPSR compiled the results of its review in a report titled “Part 195 Project.”

The report includes 30 different recommendations for changes to Part 195, of which RSPA/OPS has adopted or proposed to adopt 18 in earlier rulemaking actions. In the Federal Register of September 6, 2002, RSPA/OPS published a notice of proposed rulemaking (NPRM) in which RSPA/OPS proposed to adopt five more recommendations (67 FR 56970). The NPRM also described the earlier actions and explained why RSPA/OPS had declined to adopt seven recommendations.

## Disposition of Comments

This section of the preamble summarizes the written comments RSPA/OPS received in response to the NPRM. It also describes how RSPA/OPS treated those comments in developing this Final Rule. If a proposed section is not mentioned, no significant comments were received on that section and RSPA/OPS is adopting it as final.

RSPA/OPS invited the public to comment by November 5, 2002, on proposed changes to five sections in Part 195: § 195.222, Welders: Qualification of welders; § 195.252, Backfilling; § 195.310, Records; § 195.403, Training; and § 195.434, Signs. The only comments RSPA/OPS received were from the Florida Department of Transportation (FDOT) and the Washington Utilities and Transportation Commission (WUTC).

FDOT was concerned that Part 195 could be construed to supersede its more stringent requirements on backfilling and abandonment. For example, FDOT said it does not allow abandonment of utility facilities, whereas § 195.402(c)(10) permits operators to abandon pipelines under appropriate procedures. FDOT recommended that RSPA/OPS state in Part 195 that the part does not supersede state requirements unless those requirements are less stringent.

RSPA/OPS has not added this statement to Part 195 because it may not be in accord with the preemption provisions of Federal pipeline safety law (49 U.S.C. 60104(c)). Those provisions

prohibit state agencies from establishing any safety standards for interstate pipeline facilities. And although state agencies that meet certain requirements may establish additional or more stringent safety standards for intrastate pipeline facilities, the state standards must be compatible with the federal safety standards. The preemption provisions do not allow state agencies to establish less stringent safety standards for intrastate pipeline facilities. To say that Part 195 does not supersede state requirements unless they are less stringent would incorrectly imply that states may have safety standards for interstate pipeline facilities or may have less stringent standards for intrastate pipeline facilities. In addition, such a statement would incorrectly imply that Part 195 does not supersede a state agency's more stringent intrastate standards that are incompatible with Part 195.

Having said this, RSPA/OPS does not want to leave the impression that it considers FDOT's more stringent requirements on backfilling and abandonment to be inoperative in view of the Federal preemption provisions. As RSPA/OPS construes those provisions, they apply only to generally applicable state safety standards. They do not apply to safety requirements that a state or local agency may attach to specific construction permits as a condition of exercising the permit. It is in this vein that RSPA/OPS believes FDOT applies its more stringent requirements.

WUTC generally supported the NPRM, but made specific comments on the backfilling standard proposed in § 195.252. RSPA/OPS proposed that backfilling must provide firm support under the pipe and prevent damage to the pipe and pipe coating from equipment and backfill material. As explained in the NPRM, RSPA/OPS did not propose to adopt NAPSRS's recommendation that

backfill material not contain objects that could damage the pipe or pipe coating. RSPA/OPS reasoned that such material may not always be available near construction sites, and under the proposed standard, material with such objects could only be used if damage is prevented by means such as a sufficient initial layer of material that is free of potentially damaging rocks. Nevertheless, WUTC was concerned that operators could still use large rocks that could later cause damage to the pipe. WUTC suggested that backfill material not contain either rocks larger than six inches or organic material, such as wood, that may decay and cause subsidence or erosion.

WUTC is correct that the proposed standard would not preclude operators from using backfill material that contains large rocks. However, to do so operators would have take steps to insure that the rocks do not damage the pipeline. RSPA/OPS said in the NPRM that one means of protection is an initial layer of rock-free material. WUTC implied that this method may not be adequate in the presence of large rocks. If so, operators would have to use some other means of protection. For example, they could install a durable rock shield either by itself or in addition to a layer of rock-free material. Because reasonable means are available to protect against rock damage, RSPA/OPS does not think a restrictive standard like WUTC suggested is necessary for safety. The performance nature of proposed § 195.252 would also require operators to take protective action if backfill material contains enough organic material to cause damage through subsequent decay. Therefore, RSPA/OPS has adopted proposed § 195.252 as final.

## Advisory Committee Consideration

The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) considered the NPRM and the associated evaluation of costs and benefits at a meeting in Washington, DC on March 25, 2003 (68 FR 11176; March 7, 2003). The committee is a statutorily mandated advisory committee that advises us on proposed safety standards and other policies for hazardous liquid pipelines. The committee has an authorized membership of 15 persons, five each representing government, industry, and the public. Each member is qualified to consider the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed pipeline safety standards. A transcript of the meeting as well as other material related to the committee's consideration of the NPRM are available in Docket No. RSPA-98-4470.

At the meeting, the THLPSSC voted on whether the proposed rules are technically feasible, reasonable, cost-effective, and practicable, and whether the evaluation of costs and benefits is satisfactory. The THLPSSC voted unanimously to approve the proposed rules and the evaluation.

## Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures. RSPA/OPS does not consider this rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not

received a copy of this rulemaking to review. RSPA/OPS also does not consider this rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034: February 26, 1979).

RSPA/OPS prepared a Regulatory Evaluation of the final rules and a copy is in the docket. The evaluation concludes there should be only minimal additional cost, if any, for operators to comply with the rules. No comments were received on the draft evaluation that accompanied the NPRM.

Regulatory Flexibility Act. The final rules are consistent with customary practices in the hazardous liquid and carbon dioxide pipeline industry. Therefore, based on the facts available about the anticipated impacts of this rulemaking, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking will not have a significant impact on a substantial number of small entities.

Executive Order 13084. The final rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Because the rules will not significantly or uniquely affect the communities of the Indian tribal governments and will not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

## Paperwork Reduction Act

Title: Transportation of Hazardous Liquids by Pipeline Recordkeeping and Accident Reporting Requirements. OMB Number: 2137-0047

Summary: Section 195.310(b)(10) adds minor information collection requirements to an already existing information collection requirement. Operators are required to record the temperature during testing and keep the records for as long as the pipeline concerned is in service. However, RSPA/OPS believes most operators already maintain records of temperature. Also, RSPA/OPS believes the burden of retaining temperature records is minimal. These records are largely computerized. Maintaining these records on a floppy disk or computer file represents very minimal costs. Because the additional paperwork burdens of this rule are likely to be minimal, RSPA/OPS believes that submitting an analysis of the burdens to OMB under the Paperwork Reduction Act is unnecessary.

Use: Records are kept to help RSPA/OPS determine compliance with pipeline safety requirements.

Respondents (including the number of): There are 200 hazardous liquid pipeline operators that could potentially be subject to this rule.

Annual Burden Estimate: 51,011 hours per year.

Frequency: Variable.



Unfunded Mandates Reform Act of 1995. This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rulemaking proceeding.

National Environmental Policy Act. RSPA/OPS has analyzed the final rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 et seq.). Because the final rule parallels present requirements or practices, RSPA/OPS has determined that the rule will not significantly affect the quality of the human environment. An environmental assessment document is available for review in the docket.

Executive Order 13132. The final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). The rule does not establish any regulation that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

## List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, RSPA/OPS amends 49 CFR part 195 as follows:

### PART 195--TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Amend § 195.222 as follows:

a. Redesignate the existing text as paragraph (a); and

b. Add paragraph (b) to read as follows:

§ 195.222 Welders: Qualification of welders.

\* \* \* \* \*

(b) No welder may weld with a particular welding process unless, within the preceding 6 calendar months, the welder has--

(1) Engaged in welding with that process; and

(2) Had one weld tested and found acceptable under Section 6 of API 1104.

3. Revise § 195.252 to read as follows:

§ 195.252 Backfilling.

When a ditch for a pipeline is backfilled, it must be backfilled in a manner that:

- (a) Provides firm support under the pipe; and
- (b) Prevents damage to the pipe and pipe coating from equipment or from the backfill material.

4. Amend § 195.310 as follows:

- a. Remove the word “and” at the end of paragraph (b)(8);
- b. Remove the period at the end of paragraph (b)(9) and add “; and” in its place; and
- c. Add paragraph (b)(10) to read as follows:

§ 195.310 Records.

\* \* \* \* \*

(b) \* \* \*

(10) Temperature of the test medium or pipe during the test period.

5. Revise § 195.403(a)(5) to read as follows:

§ 195.403 Training.

(a) \* \* \*

(5) Learn the potential causes, types, sizes, and consequences of fire and the appropriate use of portable fire extinguishers and other on-site fire control equipment, involving, where feasible, a simulated pipeline emergency condition.

\* \* \* \* \*

6. Revise § 195.434 to read as follows:

§ 195.434 Signs.

Each operator must maintain signs visible to the public around each pumping station and breakout tank area. Each sign must contain the name of the operator and a telephone number (including area code) where the operator can be reached at all times.

Issued in Washington, DC on \_\_\_\_\_.

Samuel G. Bonasso,

Acting Administrator